

PETER T. PETRICH (WSB # 8316)

*Pro Hac Vice*

DAVIES PEARSON, P.C.

920 Fawcett—P.O. Box 1657

Tacoma, WA 98401

Telephone: (253) 620-1500

Facsimile: (253) 572-3052

ppetrich@dpearson.com

JAMES SMITH (Cal. Bar #190050)

*Local Counsel*

SMITH LILLIS PITHA, LLP

400 Montgomery Street, Suite 501

San Francisco, CA 94101

(415) 814-0404

Fax: (415) 217-7011

jsmith@slplawfirm.com

Attorneys for Defendant CH<sub>2</sub>O, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MERAS ENGINEERING INC., a  
California corporation, RICH BERNIER  
and JAY SUGHROUE,

Plaintiffs,

v.

CH<sub>2</sub>O, Inc., a Washington Corporation

Defendants.

Case No. 11-0389, LB

DEFENDANT'S SUPPLEMENTAL  
BRIEF IN SUPPORT OF MOTION  
FOR DISMISSAL

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SUPPORT OF MOTION FOR DISMISSAL

11-0389, LB

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DAVIES PEARSON, P.C.  
ATTORNEYS AT LAW  
920 FAWCETT -- P.O. BOX 1657  
TACOMA, WASHINGTON 98401  
TELEPHONE (253) 620-1500  
TOLL-FREE (800) 439-1112  
FAX (253) 572-3052

**ORIGINAL**

COMES NOW Defendant CH<sub>2</sub>O, Inc., by and through its attorneys, PETER T. PETRICH and DAVIES PEARSON, P.C., *pro hac vice*, and pursuant to the Court's order of April 28, 2011, submits the following supplemental brief addressing the implications of Judge Bryan's April 18, 2011 order in *CH<sub>2</sub>O, Inc. v. Bernier and Sughrue*, C11-5153 RJB

# I. ARGUMENT

a. There are ample grounds to support Defendant CH<sub>2</sub>O, Inc.'s motion for dismissal in the present action:

The arguments set forth in Defendant CH<sub>2</sub>O, Inc.'s motion for dismissal provide ample grounds for this Court's dismissal of Plaintiffs' action for declaratory judgment. Plaintiffs engaged in improper forum shopping and filed an anticipatory suit in California in a blatant attempt to avoid the terms of employment agreements that they knowingly and voluntarily entered into. These arguments supported dismissal of the present matter even before Judge Bryan ruled in the Washington District Court matter. The fact that Judge Bryan has now ruled that Washington is the proper forum for the matters at issue between these parties only strengthens the argument for this court to exercise its discretion and dismiss the California suit.

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1 b. Judge Bryan's ruling in the Washington U.S. District Court action supports  
 2 Defendant CH2O, Inc.'s motion for dismissal in the present action:

3 Judge Bryan expressly denied Bernier's and Sughroue's motion to dismiss, stay or  
 4 transfer the Washington matter (except as to the dismissal of Sandra Bernier), on the  
 5 basis that the parties entered into a valid choice of forum agreement agreeing that any  
 6 action would be brought in Washington. As Judge Bryan discussed in detail, this forum  
 7 selection clause is valid under both Washington and California law. The "first to file",  
 8 which is discretionary, does not apply in matters where there is a valid forum selection  
 9 clause. Judge Bryan also discussed in detail why transfer of the Washington action to  
 10 the Northern District of California is not appropriate, and that all issues can be dealt with  
 11 in the Washington action. Since this decision has now been entered, and jurisdiction for  
 12 the declaratory judgment action in California is discretionary, there is no reason that the  
 13 California action should not be dismissed.  
 14

15 Mr. Bernier and Mr. Sughroue have requested that Judge Bryan reconsider his  
 16 ruling in the Washington matter and have also requested him to certify the matter to the  
 17 9<sup>th</sup> Circuit Court of Appeals. Thus Mrssrs. Bernier and Sughroue are already actively  
 18 participating in the Washington action and demonstrate no prejudice by having to  
 19 litigate in the forum they agreed to in the employment agreements. Continuing the  
 20 present, duplicative action in California is unnecessary and unwarranted.  
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1 For the reasons set forth above, CH<sub>2</sub>O, Inc. again respectfully requests that this  
2 Court dismiss the present action. This Court should exercise its broad discretion and  
3 dismiss the declaratory action; allowing it to continue would permit Mr. Bernier and Mr.  
4 Sughroue to engage in forum shopping and result in piecemeal litigation.

5 DATED this 11th day of May, 2011.

6 DAVIES PEARSON, P.C.

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8 PETER T. PETRICH, WSB #8316

9 *Pro Hac Vice*

10 Attorneys for Defendant

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